

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 4:16 CR 239 RLW/NAB
)	
NICHOLAS J. MARROCCO,)	<u>FILED UNDER SEAL</u>
)	
Defendant.)	

**MOTION FOR ENTRY OF UNOPPOSED PROTECTIVE ORDER GOVERNING THE
DISCLOSURE OF LAW ENFORCEMENT SENSITIVE DOCUMENTS**

Pursuant to Fed. R. Crim. P. 16(d)(1), the United States of America, by Richard G. Callahan, United States Attorney for the Eastern District of Missouri, and Robert F. Livergood, Assistant United States Attorney for said District, moves for the entry of an unopposed protective order, and in support thereof states as follows:

1. The indictment in this case charges the defendant with one count of Receipt of Child Pornography, in violation of Title 18, United States Code, Section 2252A(a)(2).
2. The investigation that led to defendant's arrest involved a peer-to-peer program called Freenet. Freenet is a type of peer-to-peer network software that allows users to share files over the Internet. It uses a decentralized, distributed data store to keep and deliver information. It is free and publicly available software for publishing and communicating on the Internet. Freenet's focus is to provide a place on the Internet for free speech and anonymity.
3. Special Investigator Wayne Becker developed a method to identify those using Freenet to obtain files containing images and videos of child pornography. Law enforcement continues to refine the method used. S.I. Becker has written law enforcement sensitive articles explaining how to investigate the sharing of child pornography on Freenet. These articles have

been modified as the method used to investigate evolves. The articles written by S.I. Backer have previously been provided to the defense under a protective order.

4. The Government is in possession of another law enforcement sensitive article pertaining to Freenet: “Statistical Detection of Downloaders of Child Exploitation Materials in Freenet.” This article is written by Brian Levine, Marc Liberatore, and Brian Lynn, College of Information and Computer Sciences, University of Massachusetts, Amherst. Additionally, the Government is in possession of a deposition of Wayne Becker, from the case of *Missouri v. Hollander*, 15SL-CR00045, that was taken on February 3, 2016. The subject matter of the deposition involves Freenet.

5. Defendant has requested to view the law enforcement sensitive article listed above and the deposition of Wayne Becker to determine whether to file motions to suppress.

6. The Government agrees to turn over the article and deposition, however, requests that the Court enter a protective order to protect the article and deposition from being disclosed.

7. Entry of a protective order will strike the proper balance between the defendant’s need for the law enforcement sensitive article and deposition, and law enforcements’ need to keep the article and deposition confidential so as to protect the investigative technique used to identify those who use Freenet to obtain child pornography.

8. For the reasons set forth above, the Government respectfully requests that this Court enter the proposed protective order.

Respectfully submitted,

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/s/ Robert F. Livergood
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CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2017, the foregoing was filed electronically with the Clerk of the Court and that a copy was emailed to the following:

Daniel A. Juengel
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Clayton, MO 63105.

/s/ Robert F. Livergood
ROBERT F. LIVERGOOD, #35432MO
Assistant United States Attorney